

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIAOrder Instituting Rulemaking to Implement 2-1-1
Dialing in California.Rulemaking 02-01-025
(Filed January 23, 2002)**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants \$54,827.21 to the California Alliance of Information and Referral Services (CAIRS) in compensation for substantial contributions to Decision (D.) 03-02-029.

1. Background

D.03-02-029 adopted the regulatory policies and procedures needed to implement 2-1-1 dialing, whereby Californians can obtain information about, and referral to, community social services via the 2-1-1 abbreviated dialing code.

2-1-1 is the national abbreviated dialing code designated by the Federal Communications Commission (FCC) to be used to access non-emergency community information and referral (I&R) providers. The FCC found that “[i]ndividuals facing serious threats to life, health, and mental well-being have urgent and critical human needs that are not addressed by dialing 911 for emergency assistance or 311 for non-emergency police assistance.”¹ Upon

¹ See *Third Report and Order and Order for Reconsideration*, FCC 00-256, *In the Matter of the Petition by the United States Department of Transportation for Assignment of an Abbreviated dialing Code (N11) to Access Intelligent Transportation Systems (ITS) Services Nationwide*, NSD-L-24; *In the Matter of the Request by the Alliance of Information and Referral Systems, United Way of America, United Way 2-1-1 (Atlanta, Georgia), United Way of Connecticut*,

Footnote continued on next page

dialing 2-1-1, a caller is routed to a referral service and then to an agency that can provide information concerning social services such as housing assistance, programs to assist with utility bills, food assistance and other less urgent situations not currently addressed by either 911 or 311 services.

On August 30, 2001, CAIRS petitioned the Commission to implement 2-1-1 dialing in California. On January 23, 2002, the Commission responded to CAIRS' petition and instituted Rulemaking (R.) 02-01-025, thereby initiating the requested rulemaking into the implementation of 2-1-1 dialing in the State of California.

On March 8, 2002, Commissioner Duque and Administrative Law Judge (ALJ) Sullivan presided over a prehearing conference in San Francisco to address the scope of issues in the proceeding and to determine a schedule for resolving them.

On April 8, 2002, CAIRS filed a notice of intent to claim compensation (NOI) in this proceeding. After review of the NOI, ALJ Sullivan, in a ruling dated April 22, 2002, found that CAIRS had met all the requirements for eligibility for intervenor compensation, except for a showing of financial hardship. CAIRS was granted permission to make its showing of financial hardship in its request for compensation.

On April 30, 2002, Commissioner Duque and ALJ Sullivan issued a "Scoping Memo and Ruling of Assigned Commissioner and Administrative Law

Florida Alliance of Information and Referral Services, Inc. and Texas I&R Network for Assignment of 2-1-1 Dialing Code, NSD-L-98-80; and in the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92-104, released July 31, 2000 ("N11 Third Report and Order"), ¶ 18.

Judge” (Scoping Memo) affirming the classification of the proceeding as quasi-legislative and the preliminary determination that hearings were not necessary. In addition, the Scoping Memo identified four major issues for resolution and adopted a procedural timetable for resolving the outstanding issues. Further, the Scoping Memo stated that CAIRS’ reference technical filing on network architecture could form a basis for a constructive workshop.

On May 29 and 30, 2002, the Commission conducted a workshop on 2-1-1 dialing to address the technical changes telephone companies must make in order to introduce 2-1-1 in California. On August 20, 2002, the Commission’s Telecommunications Division issued a “2-1-1 Dialing Workshop Report” (Workshop Report). Parties had an opportunity to file comments and replies on the Workshop Report.

On February 13, 2003, D.03-02-029 was issued. Key elements of the decision are as follows:

- The decision established guidelines and procedures whereby the Commission can certify I&R providers as eligible to purchase network telephone service that will enable them to receive calls from those who dial 2-1-1. The decision required all local exchange carriers to provide 2-1-1 call origination services at reasonable rates in those territories that will be served by 2-1-1 I&R providers.
- The decision required that, consistent with FCC rules and the public interest, payphone operators in those territories receiving 2-1-1 service must discontinue any incompatible use of 2-1-1 dialing and must route calls to I&R providers.
- The decision permitted I&R providers to secure 2-1-1 call origination service from incumbent carriers using the architecture of their choice. I&R providers, on the other hand, must secure an 8YY number and 800 service for call routing by payphone operators or competitive local exchange carriers

who prefer to use this network architecture to provide 2-1-1 call origination services.

- To speed implementation, the decision established a series of deadlines and milestones for securing the timely and smooth implementation of 2-1-1 I&R services.

On April 9, 2003, CAIRS filed a request for intervenor compensation, in the amount of \$56,495.96, for substantial contributions to D.03-02-029.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.² Section 1804(a) requires an intervenor to file an NOI to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.³ It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific

² All statutory citations are to the Public Utilities Code.

³ To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Timeliness of Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission approved D.03-02-029 at its scheduled public meeting on February 13, 2003 and mailed it to parties of record on February 18, 2003. The sixtieth day after the February 18 mailing was April 19, 2003. CAIRS' request for compensation was timely filed on April 9, 2003.

4. Determination of Eligibility

4.1 Significant Financial Hardship Requirements

Before the Commission grants an intervenor compensation award, the intervenor must satisfy the § 1803(b) requirement that participation or intervention without an award of fees or costs imposes significant financial hardship. CAIRS was granted permission to make its showing of financial hardship in its request for compensation. The ALJ Ruling of April 22, 2002, determined that CAIRS meets the first definition of customer as specified in §

1802(b),⁴ specifically stating that CAIRS represents those customers of phone companies that provide information regarding health and human service to a large number of people across the state via the telecommunications network. The definition of customer is important because it is one of the principal factors for determining the appropriate financial hardship requirement that must be met in order for the participant to be eligible for intervenor compensation. Section 1802(g) states that significant financial hardship means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation (hardship test), or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding (comparison test).

On May 13, 2002, Cox California Telcom, L.L.C. (Cox) filed a Motion for Clarification of the April 22, 2002 ALJ Ruling Regarding the Notices of Intent to Claim Compensation. Cox asserts that the ALJ Ruling should be clarified to include the proper legal standard, as set forth in the February 19, 2002 ALJ Ruling Regarding Notice of Intent to Seek Compensation by the California ISP Association (CISPA) in Case (C.) 01-07-027, California ISP Association v. Pacific Bell (CISPA Ruling), whereby CAIRS would be required to prove the financial viability of each of its members to establish that its participation in this proceeding would pose a significant financial hardship as defined under § 1802(g). We will deny Cox's Motion for Clarification. As discussed below, we

⁴ The first § 1802(b) definition of customer is any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

will employ the comparison test to substantiate financial hardship for CAIRS in this proceeding.

On May 21, 2002, CAIRS filed its response to Cox's May 13, 2002 motion, indicating (1) that Cox correctly identified the existing legal financial hardship standard for CAIRS to claim compensation, (2) that CAIRS did not oppose any necessary clarifications to reflect the appropriate standard, and (3) that CAIRS intended to comply with necessary requirements when it submitted its compensation claim. Although CAIRS apparently agreed with the content of Cox's Motion for Clarification, CAIRS did not make a showing of financial viability for each of its members when it filed its April 9, 2003 compensation request. CAIRS addressed financial hardship on a total organization basis rather than on an individual member basis. The compensation request also included a showing related to the comparison test, which we conclude is the appropriate § 1802(g) standard for CAIRS in this proceeding. As such, we will not require CAIRS to demonstrate the financial viability for each of its members as requested by Cox.

4.2 Discussion

In determining the appropriate financial hardship standard, we first evaluated CAIRS' representative capacity. In D.98-04-059, 79 CPUC 2d 628,⁵ we discussed the three forms of customer as identified in § 1802(b). We stated:

⁵ Interim Opinion Revising the Intervenor Compensation Program and Inviting Legislative Amendment Proposals, in Order Instituting Rulemaking on the Commission's Intervenor Compensation Program, R.97-01-009 and Order Instituting Investigation on the Commission's Intervenor Compensation Program, I.97-01-010.

... The code identifies three forms of “customer”: participant representing consumers, representative authorized by a customer, and representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. A “participant representing consumers” is an actual customer who represents more than his own narrow self-interest; a self-appointed representative. A “representative authorized by a customer” connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding. A “representative of a group or organization” is a formally organized group (with articles of incorporation and/or bylaws) authorized to represent the views of residential customers. When filing its Notice of Intent, a participant should state how it meets the definition of customer: as a participant representing consumers, as a representative authorized by a customer, or as a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers. (79 CPUC 2d at 648.)

CAIRS states that it is a membership organization. This is reflected in Exhibit A of its compensation request. Exhibit A lists the CAIRS membership and indicates that there are 57 member agencies, many of which deal with child & family services and aging & adult services. Other agencies listed provide information and referral services at the city and county level. The list also includes 32 individual members, 30 of which are associated with agencies similar to those on the agency list. Also, four agencies are listed as associate members.

For this proceeding, the ALJ Ruling of April 22, 2002, classified CAIRS as a “participant representing consumers.” However, based on the information provided in the compensation request and considering the above D.98-04-059 discussion, we now conclude that CAIRS’ capacity is more appropriately that of “representative authorized by a customer.” In this case, there does appear to be a more formal arrangement where a group of customers, specifically the CAIRS’

membership, have selected CAIRS to represent the customers' views in a proceeding.

While we have designated CAIRS to be a representative authorized by a group of customers, the appropriate financial hardship standard must still be determined. If CAIRS had met the third definition of customer, "representative of a group or organization," where the group or organization is authorized by its bylaws or articles of incorporation to represent the interests of residential customers, the comparison test would be the default financial hardship standard. CAIRS did not request this designation and therefore did not provide the information required for such designation. In D.98-04-059, we state, "Absent that authorization, a representative could only qualify as a customer under the "representative authorized by a customer" definition of customer and may therefore have to provide the significant financial hardship showing applicable to non-groups, as discussed further below." (79 CPUC 2d at 688, n. 15.)

In D.98-04-059, we further state:

The appropriate financial hardship standard to be applied to a representative authorized by a group of customers, where the "authorized pursuant to its articles of incorporation or bylaws" requirement is not in place, is less clear. Although § 1802(g) uses the phrase "group or organizations," it does not explicitly qualify the phrase (as done in § 1802(b)) to be authorized pursuant to articles or bylaws. When we evaluated this question in 1986, we determined to apply the comparison test, admitting that this interpretation could lead to abuses of the compensation program. (Id., *mimeo.*, p. 8-10.) For example, it does not appear appropriate to apply the comparison test to a representative authorized by a group of wealthy customers who form an informal group to avoid the costs of participation. At this juncture, rather than applying the comparison test to such groups as a matter of routine, we will determine which standard should apply given the form of customer asserted and the

customer's specific financial hardship showing. (79 CPUC 2d at 652.)

Conclusion of Law 8 of D.98-04-059 states:

We will determine which of these two standards should be applied to a representative authorized by a group of customers (but without authorization in its bylaws or articles) given the form of customer asserted and the customer's specific financial hardship showing. (79 CPUC 2d at 677.)

We have determined that CAIRS represents a group of customers where the "authorized pursuant to its articles of incorporation or bylaws" requirement is not in place. D.98-04-059 indicates that it may be appropriate to use the comparison test in such circumstances but that the determination should be done on a case-by-case basis to prevent abuse of the compensation program. In the case of CAIRS, the membership list provides evidence that we are not dealing with a group of wealthy customers attempting to avoid the cost of participation. CAIRS represents many non-profit entities whose primary objectives are generally aligned with furthering the public interests of residential customers. Based on this information and the guidance of D.98-04-059, we conclude that the use of the comparison test is appropriate for determining significant financial hardship for CAIRS in this proceeding.

Our conclusion that the comparison test is appropriate for CAIRS is in contrast to determinations in the CISP A Ruling referenced by Cox in its May 10, 2002 Motion for Clarification. That ruling stated, "Given this guidance, CISP A should not expect to satisfy the financial hardship requirement simply by providing its own financial information. Should CISP A wish to pursue a compensation claim in this proceeding, it should be prepared to provide the financial information of the customers that it represents." Cox uses this language to argue that we should require the same information from CAIRS in this proceeding. We disagree. As stated above, D.98-04-059 indicates that it may be

appropriate to use the comparison test in these circumstances but that the determination should be done on a case-by-case basis. The CISP A Ruling had noted Pacific Bell's assertion that CISP A's members, as shown by a list at its website, include publicly traded corporations such as Allegiance Telecom and Earthlink and that Lucent is a sponsoring member. Under those circumstances, given the guidance of D.98-04-059 regarding "wealthy customers," it was reasonable to require a showing of financial hardship for each of CISP A's members to ensure that there is no abuse of the intervenor compensation program. In the case of CAIRS, we have reviewed its membership list and do not have the same concerns. Therefore, while the standards for determining financial hardship for CAIRS and CISP A are different, that difference is based on reasonable distinctions between the circumstances of the respective claimants.

4.3 The Comparison Test

By the comparison test, CAIRS must show that the economic interest of its individual members is small in comparison to the costs of effective participation in the proceeding. In its compensation request, CAIRS states that the majority of the members are specialized information and referral providers or individuals who are unlikely to be the actual providers of the information and referral service via the 2-1-1 dialing code. CAIRS does recognize that 2-1-1 dialing may lead to the providers operating more efficiently. However those potential benefits, to a large part, are offset by potential increased operating costs. These costs will likely reflect new staffing requirements as well as telecommunications costs associated with increased call volumes. The provision of I&R services in California via 2-1-1 dialing is a matter of public interest. The primary goals of greater and more efficient provision of critical I&R services are not necessarily aligned with the generation of economic benefits. Given the nature of this

proceeding, we agree with CAIRS assertions that there will be little, if any, economic benefit to its members due to the implementation of 2-1-1 dialing.

The costs of participation are detailed in CAIRS compensation request and amount to more than \$55,000. At that level, if a member were to participate on an individual basis, the costs would far exceed any potential economic benefits. We find that the costs of effective participation to be large when compared to the minimal economic benefits that CAIRS members may receive as a result of the implementation of 2-1-1 dialing in California. Therefore, we conclude that CAIRS meets the comparison test standard and satisfies the § 1803(b) requirement that participation or intervention without an award of fees or costs would impose a significant financial hardship.

5. Substantial Contribution to Resolution of Issues

Pursuant to Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In its compensation request, CAIRS contends that its role in this proceeding was significant, noting the following:

- This Rulemaking was initiated as a result of a petition filed by CAIRS pursuant to Section 1708.5.
- Throughout this proceeding, CAIRS provided its expertise to advise the Commission regarding the proposed guidelines and application procedures for use of the 2-1-1 abbreviated dialing code by information and referral service providers.

No other participant in this proceeding had the necessary experience or knowledge regarding professional information and referral standards. D.03-02-029 specifically cites CAIRS input concerning the proposed guidelines and application procedures for use of the 2-1-1 dialing code and adopted the guidelines and procedures substantially in the form originally proposed by CAIRS.⁶

- CAIRS also provided to the Commission and interested parties technical analyses regarding how a 2-1-1 call may be routed in California. No other party undertook to provide analyses of network implementation steps for the CPUC's consideration. These analyses were an important tool for discussions during the technical workshops and served as the basis for various implementation options adopted by D.03-02-029.
- CAIRS worked with the Commission and participants in the Rulemaking to refine application guidelines and procedures as well as resolve technical and legal issues relating to the implementation of the abbreviated dialing code. This effort helped to minimize disputes and permit the Commission to adopt a reasoned and sustainable decision to implement 2-1-1 dialing in California.

A review of the record in this proceeding confirms CAIRS' contentions.

We find that CAIRS' efforts in R.02-01-025 yielded a substantial contribution to D.03-02-029.

6. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (*See* 79 CPUC 2d, at 649-650, and Finding of Fact 42.) D.98-04-059 explained that

⁶ *See* D.03-02-029, *mimeo.*, at 12-14.

participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

We have determined that the provision of I&R services in California via 2-1-1 dialing is in the public interest.⁷ Guidelines and procedures for implementing such service are necessary and were the focus of this Rulemaking. We have not determined a dollar value for benefit of this service or for the implementation of the service. Such analyses were not pertinent to our determinations in D.03-02-029. For this reason, a quantitative analysis of the benefits of participation would be difficult to perform.

D.98-04-059 recognizes the difficulty of assigning monetary value to intangible benefits. It states, “At a minimum, when the benefits are intangible, the customer should present information sufficient to justify a Commission finding that the overall benefit of a customer’s participation will exceed a customer’s costs.”⁸ In its compensation request, CAIRS states that California ratepayers and citizens in general stand to benefit from the use of the 2-1-1 dialing code, which will facilitate access to available health and human services. Ratepayers therefore will receive a substantial benefit as a result of D.93-02-029 and CAIRS’ participation in the proceeding. It also states that health and human

⁷ See D.03-02-029, *mimeo.*, Conclusion of Law 2.

⁸ 79 CPUC 2d at 650.

service agencies also stand to benefit. 2-1-1 dialing will assist such agencies avoid the costs and time associated with referring individuals to the appropriate organization to address and individual's needs.

We agree with CAIRS' depiction of the ratepayer benefit related to 2-1-1 dialing and again note that CAIRS was instrumental in instituting and processing this rulemaking. Regarding ratepayer cost, when fully implemented, 2-1-1 dialing will benefit all California ratepayers. If CAIRS' costs were spread over that base, the cost per ratepayer would be minimal. We find that the overall benefit for ratepayers exceeds the associated costs and that CAIRS' participation in this proceeding was productive.

7. Reasonableness of Requested Compensation

CAIRS requests \$56,495.96 as follows:

	Year	Rate	Hours	Total
<u>Attorney Fees</u>				
K. Taymor - Professional	2002	\$275.00	18.5	\$ 5,087.50
A. Ulmer - Professional	2002	\$210.00	91.0	\$ 19,110.00
A. Ulmer - Professional	2003	\$210.00	20.5	\$ 4,305.00
A. Ulmer - Compensation	2003	\$105.00	5.6	\$ 588.00
Total Attorney Fees				\$ 29,090.50
<u>Paralegal</u>				
M. Lyons - Professional	2002	\$160.00	7.5	\$ 1,200.00
M. Lyons - Professional	2003	\$160.00	1.0	\$ 160.00
M. Lyons - Compensation	2003	\$ 80.00	3.5	\$ 280.00
Total Paralegal				\$ 1,640.00
<u>Consultant Fees</u>				
Healy & Co.				

C. Hensley	2002	\$175.00 ⁹	138.20	\$ 24,185.00
Total Healy & Co. Costs				\$ 24,185.00

Other Costs

Reproduction costs				\$ 620.48
Parking costs				\$ 60.00
Messenger costs				\$ 98.40
Lexis charges				\$ 90.38
Phone costs				\$ 599.20
CPUC Transcript				\$ 112.00
Total Other Costs				\$ 1,580.46

TOTAL REQUEST				<u>\$ 56,495.96</u>
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7.1 Hours Claimed

CAIRS has documented its claimed hours through detailed records of the time spent by its attorneys, paralegal, and outside expert in this proceeding. The records indicate both the professional hours and the activities associated with the hours. CAIRS states that it is not requesting any compensation for the costs of preparing and processing its § 1708.5 petition. Its request is limited to its participation in this Rulemaking. Moreover, it has segregated the costs associated with its participation in this proceeding from other advocacy and legal costs incurred in connection with 2-1-1 implementation in California.

We have reviewed the detailed billing information submitted by CAIRS. With the exception of a clarification regarding billable hours for consultant services discussed below, we conclude that the hourly breakdowns reasonably support its claimed hours.

⁹ Although \$175/hour was used in its request calculation, CAIRS has clarified, in a June 10, 2003 e-mail from Andrew Ulmer to the ALJ Division, that the requested rate for Hensley is \$150/hour.

7.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.” In its compensation request, CAIRS justifies the various hourly rates charged for services by comparing the training, and experience of its attorneys, paralegal and technical consultant with that of similar professionals described in previous Commission decisions and comparing its requested hourly rates with the hourly rates adopted in those decisions. We have reviewed the same information in determining reasonable hourly rates for CAIRS in this proceeding.

CAIRS has requested an hourly rate of \$275/hour for Kenneth Taymor. Taymor graduated from Yale Law School in 1981 and has over 20 years of experience much of which relates to the telecommunications industry.¹⁰ Based on this information, CAIRS’ requested 2002 rate of \$275/hour for Taymor is reasonable for use in this proceeding.

CAIRS has requested an hourly rate of \$210/hour for Andrew Ulmer. Ulmer graduated from Tulane Law School in 1996 and has over six years of experience, including one and one-half years as staff counsel representing the Office of Ratepayer Advocates in telecommunications, energy and water proceedings before the Commission. Based on this information, CAIRS’ requested 2002 and 2003 rate of \$210/hour for Ulmer is reasonable for use in this proceeding.

¹⁰ The professional resumes of Kenneth Taymor, Andrew Ulmer, Mark Lyons and Chuck Hensley were submitted by CAIRS in the April 23, 2003 supplement to its intervenor compensation request.

CAIRS has requested an hourly rate of \$160/hour for Mark Lyons, who is classified as a senior legal assistant. Lyons has a BA degree from the University of Chicago with graduate studies in city planning and design. He has 13 years of experience, nine of which relate to telecommunications and energy regulatory matters. Lyons performed work during 2002 and 2003. In D.02-11-024, we discussed rates for paralegals and calculated the following ranges for entry-level, mid-level, and senior paralegals respectively: \$90-\$114; \$115-\$140; and \$140-\$165. In that decision we also discussed the education and experience of three Kottinger Ranch Homeowners Association (KRHA) paralegals -- Judy Pau, Marjorie Oxsen and Barbara Neilson. Pau performed work during 2000 and 2001 for KRHA. Pau had been working as a paralegal for nine years, and holds a 1988 B.A. from the University of California, Berkeley and a 1992 M.B.A. from California State University, Fresno. Oxsen performed work during 2000 and 2001 for KRHA. Oxsen holds a 1972 B.A. from the University of San Francisco, a 1973 teaching credential from California State University, Hayward, and a 1991 Paralegal Certificate from St. Mary's College, and had been a paralegal for ten years. Nielsen performed work in 2001, holds a 1974 A.B. from the University of California, Berkeley, a 1981 Certificate from University of California Management Institute, and a 1993 J.D. from Northeastern University School of Law, Boston, and had worked as a paralegal/legal assistant for 21 years.

In D.02-11-024, we determined that Pau and Oxsen, with nine and 10 years of paralegal experience respectively, should command a rate in the lower-end of the mid-level range. Nielsen, with additional experience and a law school degree, should be higher in that same range. Based on comparison data presented by KRHA and the experience level of these particular paralegals, we

established 2000 and 2001 rates for Pau and Oxsen at \$115/hour, and a 2001 rate for Nielsen of \$125/hour. Lyons' education is similar to that of Pau and Oxsen. Due to Lyons' additional experience, we will set \$120/hour as a reasonable rate for 2001. This is slightly less than Neilson who has a law degree and more experience. To set a 2002 and 2003 rate for Lyons, it is reasonable to escalate the 2001 rate to \$125/hour.

7.3 Other Costs

CAIRS' request includes \$1,580.46 in other costs, the majority of which relate to the preparation and distribution of technical reports, comments, pleadings, and other necessary documents and correspondence related to this case. We find these costs to be reasonable.

7.4 Expert Witness Fees

CAIRS requests \$24,185.00 to cover costs billed by Healy & Co. (Healy), the consulting firm that provided expert witness services to CAIRS during this proceeding. Healy's charges relate to work performed during 2002 by Chuck Hensley. Hensley's efforts focused on 2-1-1 network system design and implementation proposals, carrier pricing proposals, and workshop report comments. As discussed below, we find the costs related to Healy's consultant services to be generally reasonable. The request has been modified in order to correct discrepancies between stated and actual hourly rates and hours charged.

In the April 8, 2002 NOI and the April 9, 2003 compensation request, CAIRS states that the requested rate for Chuck Hensley was \$150/hour. However, in the compensation request, CAIRS provided justification for a rate of \$175/hour and used that amount in its calculation of the compensation amount.

In clarifying its request,¹¹ CAIRS states that the appropriate hourly rate should be \$150/hour. However, CAIRS explains that Hensley's efforts to research and draft the preliminary 2-1-1 network system design for CAIRS was, in reality, done on a \$15,000 flat rate basis. The billed time reflected in the compensation request was a calculation of the flat rate amount divided by the requested hourly rate. For this reason, the reduced hourly rate from \$175 to \$150 would only affect the remaining 52.5 billable hours and would reduce CAIRS request by \$1,310. The resultant \$22,875 would then reflect the actual amount that Healy billed CAIRS.

Hensley is the Chief Operating Officer of Healy, a worldwide telecommunications consulting company, and has over 30 years of experience in various phases of telecommunications operations and management. He has a BA degree from California State University, Long Beach and participated in the Senior Executive Program at the Stanford University Graduate School of Business. His resume indicates that, prior to his position at Healy, he had high-level technical and management experience at Pacific Bell, was the president and founder of Alaska Network Systems, a facilities-based long distance carrier in Alaska, and was president of Tele.Communications Consulting, a firm that offered a variety of consulting services in the telecommunications industry.

CAIRS indicates that Hensley's typical billing rate is \$175/hour. The requested 2002 rate of \$150/hour for this proceeding is reasonable and will be adopted. Regarding Hensley's work that was performed on a flat rate basis, the material that he prepared on 2-1-1 network system design was very helpful to

¹¹ June 10, 2003 e-mail from Andrew Ulmer to the ALJ Division.

the Commission in the technical workshop process. The cost of \$15,000 seems reasonable. We will fully reimburse CAIRS for the related costs. For the following table in this decision, we will assume 100 hours billed at \$150/hour.

7.5 Summary

We will base the award to CAIRS on the following:

	Year	Rate	Hours	Total
<u>Attorney Fees</u>				
K. Taymor - Professional	2002	\$275.00	18.5	\$ 5,087.50
A. Ulmer - Professional	2002	\$210.00	91.0	\$ 19,110.00
A. Ulmer - Professional	2003	\$210.00	20.5	\$ 4,305.00
A. Ulmer - Compensation	2003	\$105.00	5.6	\$ 588.00
Total Attorney Fees				\$ 29,090.50

Paralegal

M. Lyons - Professional	2002	\$125.00	7.5	\$ 937.50
M. Lyons - Professional	2003	\$125.00	1.0	\$ 125.00
M. Lyons - Compensation	2003	\$ 62.50	3.5	\$ 218.75
Total Paralegal				\$ 1,281.25

Consultant Fees

Healy & Co.

C. Hensley	2002	\$150.00	152.50 ¹²	\$ 22,875.00
Total Healy & Co. Costs				\$ 22,875.00

Other Costs

Reproduction costs				\$ 620.48
Parking costs				\$ 60.00
Messenger costs				\$ 98.40
Lexis charges				\$ 90.38
Phone charges				\$ 599.20
CPUC Transcript				\$ 112.00
Total Other Costs				\$ 1,580.46

TOTAL AWARD				<u>\$ 54,827.21</u>
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8. Award to CAIRS

We award CAIRS \$54,827.21 for contribution to D.03-02-029. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after CAIRS filed its compensation request. Interest will continue until the full payment is made.

¹² Includes 100 estimated hours for the \$15,000 flat rate billing, assuming a rate of \$150/hour

This proceeding is a quasi-legislative rulemaking where no specific respondents were named. Payment of the award will be made from the intervenor compensation program fund, as described in D.00-01-020. Intervenor that have never received payment of an award from the Commission must provide their taxpayer identification number to ensure payment along with a completed STD 204 Payee Data Record form, available at <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf>, to the below address. For assistance completing Section 1 of STD 204, call the phone number below.

California Public Utilities Commission
Attention: Fiscal Office
505 Van Ness Avenue, Room 3000
San Francisco, CA 94102
(415) 703-2306

As in all intervenor compensation decisions, we put CAIRS on notice that the Commission staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which CAIRS requests compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

9. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

10. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. CAIRS has made a timely request for compensation for its contributions to D.03-02-029.
2. CAIRS contributed substantially to D.03-02-029.
3. CAIRS has demonstrated that participation in R.02-01-025, without an award of fees or costs, imposes a significant financial hardship.
4. The participation of CAIRS was productive.
5. A 2002 hourly rate of \$275/hour for Taymor is reasonable based on awards to other attorneys with comparable experience.
6. A 2002 and 2003 hourly rate of \$210/hour for Ulmer is reasonable based on awards to other attorneys with comparable experience.
7. A 2002 and 2003 hourly rate of \$125/hour for Lyons is reasonable based on awards to other paralegals with comparable experience.
8. The requested 2002 hourly rate of \$150/hour for Hensley is reasonable based on awards to other experts with comparable experience.
9. The hours claimed for work performed by CAIRS and its consultant Healy & Co., as corrected in this decision, are itemized and reasonable.
10. The miscellaneous costs incurred by CAIRS are reasonable.

Conclusions of Law

1. CAIRS has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. Cox's May 13, 2002 Motion for Clarification of the April 22, 2002 ALJ Ruling regarding the Notices of Intent to Claim Compensation should be denied.
3. CAIRS should be awarded \$54,827.21 for contributions to D.03-02-029.
4. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

5. This order should be effective today so that CAIRS may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The California Alliance of Information and Referral Services is awarded \$54,827.21 in compensation for its substantial contribution to Decision (D.) 03-02-029.

2. The Motion of Cox California Telcom, L.L.C. for Clarification filed May 13, 2002, is denied.

3. The award shall be paid from the intervenor compensation program fund, as described in D.00-01-020, within 30 days of the effective date of this order. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning with the 75th day after April 9, 2003, the date the request was filed.

4. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	D
Contribution Decision(s):	D0302029
Proceeding(s):	R0201025
Author:	ALJ Sullivan
Payer(s):	Commission

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/ Disallowance
California Alliance of Information and Referral Services	4/09/03	\$56,495.96	\$54,827.21	Failure to justify hourly rate; arithmetic error

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Kenneth	Taymor	Attorney	California Alliance of Information and Referral Services	\$275	2002	\$275
Andrew	Ulmer	Attorney	California Alliance of Information and Referral Services	\$210 \$210	2002 2003	\$210 210
Mark	Lyons	Paralegal	California Alliance of Information and Referral Services	\$160 \$160	2002 2003	\$125 \$125
Chuck	Hensley	Analyst	California Alliance of Information and Referral Services	\$150	2002	\$150